



REPUBLIC OF KENYA



KENYA LAW
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**Malenya v Kenya Dental Association & another (Judicial Review Application
74 of 2020) [2025] KEHC 9406 (KLR) (Judicial Review) (30 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9406 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
JUDICIAL REVIEW APPLICATION 74 OF 2020
RE ABURILI, J
JUNE 30, 2025
IN THE MATTER OF JUDICATURE ACT
AND
IN THE MATTER OF SECTION 3A OF THE CIVIL PROCEDURE ACT

BETWEEN

NELSON MALENYA APPLICANT

AND

KENYA DENTAL ASSOCIATION 1ST RESPONDENT

**KENYA MEDICAL PRACTITIONERS & DENTIST COUNCIL 2ND
RESPONDENT**

*(Arising from judgment of Nyamweya J. delivered on 7th
May 2021 in Nairobi HCJR Application No. 74 of 2020)*

RULING

1. This ruling determines the Notice of Motion dated 14th April, 2024 filed by Dr. Nelson Malenya. The application is supported by the applicant's own sworn supporting affidavit of the even date and Further Affidavit sworn on 8th July, 2024. The application seeks the following orders
 - i. Spent;
 - ii. That the Board Members of the Medical Council, the Chief Executive Officer, Corporation Secretary, Director Standards and/or persons behind the day to day running of the Council be compelled by an order of the Court to appear on a date set by court and show cause why



they should not be committed to prison for being in contempt of court directions issued by Nyamweya J. on the 7th May 2021.

- iii. That the Board Members of the Medical Council, the Chief Executive Officer, Corporation Secretary, Director Standards and/or persons behind the day to day running of the Council be committed to civil jail for being in contempt of orders issued by Nyamweya J. on 7th May 2021.
 - iv. That registration and issuance of clinical licences to the auxiliary cadre/ pararental staff be prohibited and stopped until publication and gazettment of scopes of practice guidelines for dentists / dental practitioners and auxiliary cadres / pararental staff.
 - v. That registration and issuance of clinical licences to the auxiliary cadre/ pararental staff be prohibited and stopped until civic and public sensitisation of the different duties and roles performed by the staff compliment serving at medical facilities / hospitals dental departments is undertaken.
 - vi. That all clinical licences issued to the auxiliary cadre / pararental staff in the period in issue to date, be recalled and cancelled until orders 4 and 5 are fulfilled.
 - vii. That all licences to be issued by the respondent regulator to the auxiliary cadre/ pararental staff bear and display the area of practice as community oral health practice and promotion and a disclaimer that the licence is not meant for clinical dentistry practice.
 - viii. That the regulator be ordered to publish auxiliary cadre / pararental staff internship guidelines to regulate the training aspects of community oral health practice and promotion.
 - ix. That the regulator be ordered to publish for a period of two weeks, on 2 daily newspapers of national circulation, the difference among the Dentist / Dental Practitioner and the Auxilliary cadre / pararental staff and their different duties and roles undertaken as per qualifications, training and scope of practice.
 - x. That the regulator be ordered to advice all healthcare facilities, hospitals and clinics to have their staff compliment abide by the licensure requirements and the practice guidelines.
 - xi. That the regulator be ordered to conduct regular inspections on all healthcare facilities, hospitals, clinics providing dental care services to check on compliance with published scopes of practice guidelines and order 9.
2. The 2nd Respondent, Kenya Medical Practitioners and Dentists Council, filed the Replying Affidavit sworn by Michael R. Onyango on 23rd May, 2024 in opposition to the application, urging this court to dismiss the application.
 3. The factual background to this application under consideration is that on 7th May 2021, Justice P. Nyamweya, (as she then was) issued judicial review orders against the Respondent Kenya Medical Practitioners and Dentists Council.
 4. The applicant states that he is a member of the exparte applicant and that the 2nd respondent has refused to implement the judgment of this court. The applicant therefore took upon himself the responsibility of executing the said orders by applying to have the respondent's Chief Executive Officer committed for contempt of court for flouting the orders of this court. He accuses the exparte applicant's officials of not having an interest in the matter after judgment.
 5. In the application, the Applicant who was never a party to these proceedings which were filed in the name of the Association, the applicant seeks orders inter alia for the committal of the 2nd



Respondent's Board members, Chief Executive Officer, Corporation Secretary, and other responsible officers involved in the day-to-day operations of the Council to civil jail for what is alleged to be contempt of the orders issued by Justice Nyamweya on 7th May 2021.

6. The Applicant contends in his application that the Medical Council has failed to comply with the court orders in the following respects:
 - i. Failure to conduct stakeholder consultations within the prescribed 180 days and to suspend the registration of auxiliary cadre/paradental staff pending the regularization of the alleged illegalities.
 - ii. Failure to conduct civic education and public sensitization to clarify the roles of dentists and auxiliary cadre staff. Additionally, the Respondent has failed to establish proper identity markers distinguishing the auxiliary cadre.
 - iii. Failure to publish the scope of practice for dental staff serving in hospital dental departments. Furthermore, the Respondent continues to register and issue clinical dentistry licenses to auxiliary cadre staff without publishing and gazetting scope of practice guidelines that differentiate them from dental practitioners.
7. The Applicant alleges that despite several communications with the Medical Council, it has persistently defied the court's judgment, which amounts to an abuse of public trust, bad faith, malfeasance, nonfeasance, and a failure to fulfil its duty as a protector of patient rights and consumer interests in ensuring access to quality oral healthcare.
8. In the replying affidavit filed by the 2nd respondent, a preliminary legal issue on locus has been raised to the effect that the applicant Dr. Nelson Malenya, is not a party to these proceedings and at no point did he ever apply to be enjoined as an Interested Party or otherwise prior to filing the present application. Further, that the applicant is not an official of the Kenya Dental Association and that neither has he been authorized by any of the officials to file the present application.
9. the 2nd respondent contended that the Applicant's present application is incompetent and filed in abuse of the Court process as the applicant is a stranger to these proceedings and that he can only participate in the proceedings if he had locus.
10. In response, the applicant cites several cases stating that he has sufficient interest in the matter hence he has the necessary locus standi to bring the contempt proceedings. He relied on *Trusted Society of human Rights Alliance v Nakuru Water and Sanitation Services Company Ltd* and another [2013] eKLR and the recent case of *Pariken Ole Esho v Judicial Service Commission* and others, interested parties *Narok HC JR E002 of 2025* to support his argument.
11. Both parties have made elaborate arguments for and against the application and in my view, this is not the type of application where the court should rehash those arguments and the many decisions relied on. The matter is simple and clear.
12. The question to be answered is whether a person who was never a party to the proceedings and who has not even sought to be enjoined as a party and after judgment has been rendered, can apply to have the adverse party be cited for contempt of court and.
13. This question touches on legal standing and procedural propriety in the context of contempt proceedings where the original proceedings were instituted in the name of an association.
14. Without getting into unnecessary arguments, albeit the applicant claims that he has a sufficient interest as a member of the exparte applicant association, the proceedings here were never initiated by in the



name of officials or members of the association. There is no evidence that the applicant is an official or office bearer of the exparte applicant and that he had authority to take over the proceedings and enforce the judgment on behalf of the association.

15. Additionally, the applicant has not applied to be enjoined in these proceedings where judgment was rendered in 2021.
16. In my view, since it is the Association which is the party to the suit, then only the association (through its authorized representatives) has the locus standi to enforce that judgment, including in contempt proceedings.
17. A member of the association, other than an official, duly authorised to sue or enforce contempt proceedings cannot sue or file an application in their personal capacity to enforce a judgment entered in favor of the association, unless that member was a party to the suit or is expressly authorized to act on behalf of the association.
18. Furthermore, contempt of court is a quasi-criminal jurisdiction. It follows that if a party was not a party to the suit, unless they are made parties to the proceedings, they typically cannot initiate contempt proceedings on behalf of the actual party (the association) without proper legal authority.
19. The application, besides, is jumbled up and one can hardly establish whether the prayers for contempt as framed can issue. The pleadings are badly drafted and the application on the face of it speaks for itself. The prayers are unnecessarily long and incomprehensible. Besides, the prayers appear to be prayers that can be sought and obtained in a substantive application. They are framed in such a manner as to tend to seek a second bite at the cherry of the judgment by Justice Nyamweya who granted the judicial review orders. There is a whole difference between application to cite one for contempt of court and a notice to show cause. The latter is consequential to the contempt proceedings. The two orders cannot be sought in the same motion and be granted. Furthermore, the contempt of Court Act was declared unconstitutional and it is surprising that the applicant is seeking orders pursuant to that Act, perhaps, the reason for the many prayers for show cause which are incapable of being issued by this court on legislation which was declared unconstitutional.
20. For all the above reasons, despite the bulky documentation filed in support of and opposition to the application, I find and hold that the application dated 14th April, 2024 is fatally incompetent and the same is hereby struck out with no orders as to costs and this file is closed.
21. I so order

DATED, SIGNED AND DELIVERED AT NAIROBI VIRTUALLY THIS 30TH DAY OF JUNE 2025

R.E. ABURILI

JUDGE

